

# **EXHIBIT 6**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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IN RE:

OWENS CORNING, et al.,

Debtors.

X

:

Chapter 11

:

Case No.: 00-3837 to 3854 (JKF)  
(Jointly Administered)

:

The Honorable John P. Fullam Has Withdrawn The  
Reference With Respect To This Matter [See Docket No.  
12520]

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Related to D.I. No. 12850

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X

BRIEF IN SUPPORT OF MOTION OF CSFB, AS AGENT, TO ESTABLISH  
PROCEDURES TO OBTAIN A SAMPLE OF MEDICAL RECORDS, INCLUDING  
X-RAYS, FROM ASBESTOS PERSONAL INJURY CLAIMANTS  
ASSERTING NONMALIGNANT CLAIMS AGAINST THE DEBTORS  
AND TO MODIFY THE COURT'S AUGUST 19, 2004 SCHEDULING ORDER

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## I. PRELIMINARY STATEMENT

CSFB, as Agent for the prepetition institution lenders to Owens Corning and certain of its affiliates (the “Banks”) files this brief in support of its motion (the “Motion”) seeking an expedited procedure to obtain a random sampling of already-existing Medical Records (as hereinafter defined), including X-rays, of asbestos personal injury Claimants who have asserted nonmalignant claims against Owens Corning.<sup>1</sup> As the Court knows, Owens Corning and certain of its subsidiaries as debtors and debtors-in-possession (collectively the “Debtors”) have joined forces with the Official Committee of Asbestos Claimants (the “ACC”) and the Legal Representative for Future Claimants (the “Futures Representative,” and together with the Debtors and ACC, the “Plan Proponents”) to propose a nonconsensual chapter 11 plan of reorganization (the “Plan”) that is conditioned upon a finding that the Debtors’ liability for asbestos-related claims be estimated at no less than \$16 billion – including approximately \$10.7 billion for Owens Corning alone. The Plan Proponents contend that the quantification of the Debtors’ asbestos personal injury liability may be arrived at by extrapolating from the Debtors’ prepetition claims settlement history.

In its August 19, 2004 Order, the Court indicated that it had preliminarily determined that “the data now available -- the Debtors’ claims history, the experience in other cases, etc. -- viewed in light of the expert testimony at the scheduled hearing, should probably suffice for claims estimation purposes.” (Order Upon Claims Estimation Issues, dated Aug. 19, 2004.) As the Banks previously have argued to the Court, however, the Debtors’ settlement history cannot be relied upon for a number of reasons, but especially because so many individual claims lacked

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<sup>1</sup> In this context, references to Owens Corning refer only to the parent company of all the Debtors, the only company which has asbestos liability other than Fibreboard.

as a basis for estimation, it must be cleansed of the improprieties that permeated it.<sup>19</sup> That is what this Motion seeks to do by proposing precisely the kind of statistically significant randomly generated sample urged by the Debtors' own expert, Dr. Friedman, who stated that the "single greatest factor which may determine the future number of impaired nonmalignant claims rests largely on the willingness of all parties to provide for ongoing review of the claims and underlying data including X-rays and PFTs." Friedman Report at 35.

To implement Dr. Friedman's suggestions, CSFB respectfully requests the Court order that:

1. Within three business days of the decision of this motion, NERA Economic Consulting ("NERA" (the Banks' retained consultant)) generate a random sample of Owens Corning claimants from Owens Corning's claims database (the "Random Sample"). CSFB will serve the random sample on all parties. The Random Sample will be large enough to generate the Medical Records (including X-rays) of 1000 current claimants even assuming that not all claimants respond or provide X-rays. Any party objecting to the Random Sample shall file and serve such objections within three (3) business days of the service of the Random Sample.
2. CSFB will establish a depository for the X-rays and other Medical Records. The depository will maintain the chain of custody, physical condition and confidentiality of the X-rays and other Medical Records consistent with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. §§ 1320d-1329d-8.

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<sup>19</sup> This study will have two additional benefits: First, showing how many claims filed against Owens Corning lack a medical basis puts in context the Plan Proponents' argument that anyone who submitted a prepetition claim should be entitled to vote on the Debtors plan of reorganization. Second, the study will be an important aid in devising appropriately rigorous procedures to govern any trust established pursuant to 11 U.S.C. § 524(g).